FILED
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IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1952.

No. 660

JACK PRINCIPALE,
*Petitioner,*

*v.*

ASSOCIATED GAS AND ELECTRIC COMPANY,
LEWIS M. DABNEY, JR., Trustee,
ASSOCIATED GAS AND ELECTRIC CORPORATION,
ALLEN E. THROOP, Trustee,
GENERAL PUBLIC UTILITIES CORPORATION,
*Respondents.*

IN THE MATTER
*of*
ASSOCIATED GAS AND ELECTRIC COMPANY,
*Debtor.*

## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT OF PETITION.

JACK PRINCIPALE,
*Petitioner pro se.*

Pandick Press, Inc., 22 Thames St., New York 6, N. Y., U. S. A.

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## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT OF PETITION.

*To the Honorable Fred M. Vinson, Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:*

Your petitioner respectfully shows:

## I.

### Summary Statement of the Matter Involved.

Petitioner seeks a review of the Judgment and Affirmance made on December 20, 1951 by the United States Court of Appeals for the Second Circuit, of an order made July 21, 1950 by the United States District Court of New York (per United States Judge John F. McGohey), dismissing a civil suit entered on March 30, 1950 by the petitioner for the sum of $765,000 (Record, pp. 4, 5, 6) with prejudice (Record, pp. 21, 22); and from the order of Alfred E. Coxe, U. S. D. J., made February 10, 1951 (Record, pp. 39, 40) denying a motion of the Petitioner (Record, pp. 25 *et seq.*) for a re-opening and re-examination of the reorganization of the holding company Associated Gas and Electric Company ("Ageco"), parent company of the holding company Associated Gas and Electric Corporation ("Agecorp"), now called General Public Utilities Corporation ("GPU"), also a holding company.

On July 28, 1950, in less than 10 days before the July 21, 1950 order was entered, Petitioner entered a show cause order for a new hearing under Rule 59(a)(b) of the Rules of Civil Procedure for the District Courts of the United States. He was given the right to make an application for relief before Judge Leibell, U. S. D. J., who presided over the reorganization proceedings (Record, p. 26). This memorandum is in the original record and was signed by Sidney Sugarman, U. S. D. J., on July 28, 1950. This right was not granted by the District Court (see ~~p. 7a~~). A. pp. 1 a to 4 a.

On January 15, 1951 a motion was entered by the petitioner with an annexed affidavit (Record, pp. 25-35). This motion for a re-opening and re-examination of the reorganization proceedings was denied by Alfred C. Coxe, U. S. D. J. (Record, pp. 39, 40).

On March 14, 1951 an appeal to the United States Court of Appeals for the Second Circuit was made from the above orders.

On June 22nd, 1951 on a motion made by the petitioner to the United States Court of Appeals an order was entered extending the time to file the record and brief for 60 days. (A. p.

On September 4, 1951, this court entered a decision granting the application of the petitioner to file the original record. (A. p. 6a)

Therefore, it appears that the filing of the record and the extension of time was made within the provisions of Rule 24 of the United States Court of Appeals and the case was added to the calendar.

Thereafter, on December 20, 1951 said United States Court of Appeals rendered its order, judgment and decree, stating that the appeal from the order of July 21, 1950 dismissing the complaint be and it hereby is dismissed for lack of jurisdiction: and that the order of February 10, 1951 be and it hereby is affirmed with costs.

A petition for a rehearing was made on December 28, 1951 on the ground that this appeal was taken in accordance with the June 22, 1951 order extending my time to file my record and brief for 60 days by the United States Court of Appeals, and on the basis of the September 4, 1951 decision entered by this same court granting the application of the petitioner to file the original record. It was denied on January 4, 1952.

An order and judgment was signed on February 11, 1952 by Thos. F. Murphy, U. S. D. J. although a stay of the execution of the mandate was made on that day pending the instant application to this court.

Petitioner, Jack Principale, is a bona fide holder of participating Convertible Obligations, due 2002, Series 6%, 6½% and 7% of Associated Gas and Electric Company.

A majority of this class of securities were given participation rights as Original Holders, the rest who bought in the open market were left out of the Plan. Petitioner was denied participation.

The District Court in passing upon the fairness of the Plan, under Article XII, Section 199(C) Chapter X of the Bankruptcy Act appears to have disregarded Section 77(B) subsection (E) of the Act which provides exactly against such discriminations and flagrant abuses of the Bankruptcy Act.

Petitioners bonds were not issued in excess of the amount authorized by the Charter of Incorporation, they were convertible by their terms from C D Cs to COs. (Record, pp. 27, 28, 29).

The preference given the original holders and disallowing the petitioner the same rights under the plan is an abuse of the Bankruptcy Act.

## II.

### Jurisdictional Statement.

It is contended that the Supreme Court has jurisdiction to review the judgment herein in question under Sec. 24(b) of the Judicial Code, and Section 25(a) of the Bankruptcy Act upon the questions of law and fact, pursuant to the provisions of Section 77-B, subsection (E) of the Bankruptcy Act, which provides against such discrimination in a bankruptcy proceeding.

The granting of a portion of holders of the same class of security holders' participation rights was decided against by a Report of the Senate Committee on May 21, 1938. Such discriminations are held to be contrary to law.

## III.

### Question Presented.

The question presented is:

1. Whether the Petitioner has the right to his independent civil suit after all attempts to participate under the Plan have failed in view of the provisions of Section 77-B, subsection E of the Bankruptcy Act.

2. Whether this right can be sustained by the fact that the assets in the subsidiary companies were sufficient to provide the inclusion of his bonds under the Plan.

3. Whether the reorganization proceeding should be reopened to allow his share of the assets of the subsidiary companies.

## IV.

### Reasons.

**Reasons relied on for the allowance of the writ.**

1. That the United States Court of Appeals for the Second Circuit has decided an important question of Federal law, which has not been, but should be settled by this Court.

2. Whether the rights to these surplus assets can be made available to the Petitioner under Article X, Sec. 216, subsection (8) of the Bankruptcy Act, which provides equitable and fair protection for class of stockholders which is affected by the Plan.

## V.

### Argument in Support of Petition.

I started an independent action in the District Court of the United States for the Southern District of New York #56388 only after failure to participate pursuant to the plan of reorganization ("Plan") of Associated Gas and Electric Company and Associated Gas and Electric Corporation, both registered holding companies now called General Gas and Electric Corporation ("Gengas"). Corporations: A creditor is entitled to proceed in equity to have a preference set aside. 19 C. J. Secundum.

Although the Plan was reorganized under Chapter X of the Bankruptcy Act, only Original Holders of my class of securities, the 6%, 6½% and 7% Convertible Obligation due 2002, were given participation rights, the rest were excluded, therefore making the Plan unfair and in complete violation of Section 77 (B) subsection (E) of the Bankruptcy Act which provides against such discrimination. The Plan was unjust in disallowing my participation as a Matter of Law. It was also inequitable in view of the tremendous assets of the utility physical properties and stocks as a Matter of Fact. (See *Northern Pacific Ry. Co.* v. *Boyd*, 228 U. S. 482, 504, 33 Sup. Ct. 554, 560, 57 L. Ed. 931, 942 (1913).)

In this reorganization only the holding companies Ageco and Agecorp which were combined to form GPU (General Public Utilities Corporation) were affected, and the new common stock was issued.

All of the domestic and foreign subsidiary companies exclusive of the holdings in the Philippines were not affected by the reorganization of the parent holding companies.

The outstanding bonds of Ageco and Agecorp before the reorganization amounted to $258,000,000, after the reorganization. This indebtedness was reduced to 8,000,000 shares of $5 par value of the new holding company General Public Utilities Corporation ("GPU") totalling about $40,000,000 including a long term debt of $6,000,000, leaving the new company, GPU, a cash surplus of $80,000,000, and in control of the utility properties and stocks of the subsidiary companies.

As I have stated, the properties, stocks and bonds of the subsidiary companies were not affected by the reorganization, but various liquidations, acquisitions of new securities have been made under the Public Utility Holding Company Act of 1935.

As at December 31, 1950, the combined balance sheet of the domestic utility subsidiaries exclusive of the Manila properties now held by the new holding company GPU amounted to $432,233,319, while the net property amounted to $353,070,987 after deducting reserves for depreciation. The total capital stock of these subsidiary companies exclusive of properties amounted to $181,520,000. The stocks and properties of the Philippine utility companies are not included.

It is quite evident from these facts that the reorganization which excluded me from my share in the securities of the subsidiary companies was unjust and inequitable. These assets should have been liquidated before the plan went into effect under Section 11 (b) (1) of the Public Utility Holding Company Act and met the contractual rights as contained in the Charter of Incorporation of Ageco which provided the holder of my securities the full face value and dividend accruals in the event of winding up, reorganization or liquidation of the company of Ageco.

The reorganization of Ageco is a flagrant abuse of the Bankrupcty Act and the Public Utility Holding Company Act of 1935. These abuses of favoritism in wiping out a majority group of creditors and giving the rest about 12½ cents on the dollar clearly show the control exercised by this financial group in New York.

The Plan completely violated the provisions of intra-class discrimination laws which have been upheld by the Report of the Senate Committee of May 27, 1938, at page 25, where it is held that Subsection (2) of Section 221 provides, as a condition to confirmation of a plan, that the Judge must be satisfied that it is fair and equitable, and "feasible". Implicit in the former phrase is a prohibition against any unfair discrimination in the Plan in favor of any class of creditors or stockholders and the express statement to that effect of Section 77 B (f) (1) was therefore unnecessary. (Par. 8277, Sec. 001 of Art. 11—Confirmation and Consummation of Plan, Commerce Clearing House.)

Under order from the SEC, the Trustees of Agecorp are gradually divesting themselves of their interest in many of the subsidiary companies pursuant to Section 11 (b) (1) of the Holding Company Act of 1935.

The strategic objective of the Financial Group has become a reality, the distribution of assets, simplification of corporate structure of the subsidiary companies has been made with the blessing of the SEC and with the approval of the Court under Chapter X of the Bankruptcy Act.

Through its approval the Court itself has violated a Section of the Act 77 (b) subsection (e) by allowing only a portion of my class of securities participation under the Plan while the rest were excluded.

Evidently new legislation is needed to prevent this abuse of the Bankruptcy Laws by this destructive New York Financial Group which is able to turn the procedure of the Court and the SEC to its own advantage.

Former holders of the Associated Gas and Electric List who have been deprived of their rights in the utility subsidiary companies by this scheming New York Financial Group is great. The Casualty List in my class of securities shows that only 17,500 shares of the participating Preferred Stocks were given participation rights, while the remaining 623,867 shares of this same class of securities were wiped out. The holders of the participating 6%, 6½% and 7% Convertible Obligations due 2002, which is the class I hold, were also given the same treatment. The total amount of these securities was $28,000,000 principal amount; only $20,000,000 principal amount were allowed participation, $8,000,000 principal amount of this same class of securities were discriminated against and were not given participation rights in the Plan.

> "It is obvious that a reorganization proposed by a majority of any class which does not, on its face, afford equal participations to the minority is unfair. (See Eagleson *v.* Pacific Timber Co., 270 Fed. 1008 (Del. 1920).)
>
> "A plan which makes provisions for a portion of a class of stockholders, but makes no provision for the balance is unfair." (See Nave-McCord Mercantile Co. *v.* Ranney, 29 F. (2) 383 (C. C. A. 8th, 1928), 77 U. Pa. L. Rev. 807.)

In starting my Civil action, I asked for a Jury Trial, but it was never given me. On a motion by the Attorneys of GPU, I was threatened with imprisonment unless I discontinued my action (Record, pp. 8-9).

On July 19, 1950, John F. X. McGohey, U. S. D. J., dismissed my action with prejudice (See Pages 21 and 22 of my Appendix to Brief). I asked for a reopening of the reorganization proceedings (pp. 25-35 of Appendix).

This Motion was denied before Alfred C. Coxe, U. S. D. J., on February 13, 1951.

I appealed the orders of Judge McGohey and Judge Coxe, and entered a Notice of Appeal on March 14, 1951.

Appearing before Hon. Jerome N. Frank, an order extending my time to file record and brief was granted me on June 22, 1951.

A further order to file my original record was granted me on September 4, 1951, and my case was entered to the calendar in accordance with the provisions of Rule 24 in the United States Court of Appeals on November 23, 1951.

My appeal from the July 19, 1950 order of John F. X. McGohey, U. S. D. J., and from the February 13, 1951 order of Alfred C. Coxe, U. S. D. J., was heard before Swan, Chief Judge, L. Hand and Augustus N. Hand, Circuit Judges on December 7, 1951, and decided against me on December 20, 1951.

I filed a Petition for a Rehearing on December 28, 1951. On January 4, 1952, it was denied me.

On January 8, 1952, a Mandate was filed in the District Court by the Circuit Court of Appeals stating that the appeal from the 7-21-50 order dismissing the complaint be and it is hereby dismissed for lack of jurisdiction, the order of 2-10-51 is affirmed with costs taxed at $55.62.

The securities legislation needs an investigation. The conflicting provisions of Article VII, Section 199 of Chapter X, Section (C), The Plan is fair and equitable, and feasible, appears to be in contradiction to Section 77 (B) subsection (E) of the Bankruptcy Act, which provides that: After hearing such objections as may be made to the plan, the

Judge shall confirm the plan if satisfied that (1) it is fair and equitable and does not discriminate unfairly in favor of any class of creditors or stockholders, and is feasible.

It appears, in view of the unjust treatment and interpretation of Chapter X, that a clarification must be made, and my rights as a creditor should be adjudicated.

## Conclusion.

WHEREFORE, your petitioner prays that a Writ of Certiorari issue under the seal of this court, to the end that this cause may be reviewed and determined by this Court, as provided for by the statutes of the United States; and that the order, judgment and decree of December 20, 1951 of said United States Court of Appeals for the Second Circuit be reversed by this Court, and for such further relief as to this Court may seem proper.

Dated: March 18, 1952.

JACK PRINCIPALE,
Petitioner, *pro se.*

# APPENDIX.

**Order to Show Cause Why Relief Was Denied Me in an Action in Equity When There Was Turned Over $78,000,000 in Cash, and 72 Operating Companies With a Value of $682,602,319 and About $20,000,000 in the Net Assets as Set Forth by the Court.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

| | |
|---|---|
| PRINCIPALE<br>*vs.*<br>ASSOCIATED GAS & ELECTRIC CO., *et al.* | Civil 56-388. |

Upon the annexed affidavit of Jack Principale, sworn to July 27, 1950, it is

ORDERED, that:

1. Allen E. Throop, Attorney and Trustee show cause before this Court in Room 506, United States Court House, Foley Square, Borough of Manhattan, City and State of New York, on August 2, 1950, at 10:30 o'clock in the forenoon, or as soon thereafter as counsel may be heard, to state what happened to the above assets, why weren't they made available to me as of the time they were turned over from Ageco to GPU and why an order should not be entered allowing me my contractual rights over and above the amount decreed by the Court despite the final decree of this Court in these proceedings, dated August 12, 1946 and that an investigation be made to reopen the reorganization proceedings to let my class of securities in for a share and that the order in the above entitled case entered on July 21, 1950 be set aside pursuant to Rule 59 (b) and (e) of the Federal Rules of Civil Procedure.

2. A copy of this order and of the annexed affidavit shall be served on said Allen E. Throop on or before July 28, 1950.

JACK PRINCIPALE.

Dated New York, N. Y., July 28, 1950.

## Affidavit of Jack Principale, Annexed to Order to Show Cause.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

| | |
|---|---|
| PRINCIPALE<br>*vs.*<br>ASSOCIATED GAS & ELECTRIC CO., *et al.* | Civil 56-388. |

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

JACK PRINCIPALE, being sworn, deposes and says:

1. As a non-original holder of Associated Gas and Electric Company, Convertible Obligations ("COs") I was cut off from the plan.

2. I was also barred from the above Civil Action because of the final decree of August 12, 1946.

3. The question is—what happened to the $78,000,000 in cash surplus? What happened to the 72 operating companies and why weren't the stocks of these companies with a value of $675,000,000 sold in the open market in order to meet the obligations of the bonds of the holding company Ageco which I hold? What happened to the surplus of over $20,000,000 over and above the figure set by the court as of the time these assets were turned over from Ageco to GPU?

4. I demand a full investigation, want the reorganization proceedings reopened, and want my share of these assets.

*Affidavit of Jack Principale, Annexed to Order to Show Cause.*

5. I also ask to have Judge McGohey's order entered on July 21, 1950 stayed until further order of this court pursuant to the Federal Rules of Civil Procedure, No. 59 (b) and (e).

6. When I filed my complaint the two Debtors and General Public Utilities Corporation ("GPU") as defendants (Civil Action No. 56,388), an order was submitted by them to this court that I be committed to prison or otherwise dealt with unless and until I shall discontinue my action.

7. On the basis of the foregoing, this Court is respectfully requested to enter an order, substantially in the form annexed hereto, directing Allen E. Throop, Counsel and trustee of Associated Gas & Electric Co. *et al.*, to show cause why I am not entitled to these assets, what happened to these assets? and why I cannot maintain a bill in equity to get my share of the assets over and above the amount decreed by the court as of the time these assets were diverted from Ageco to GPU.

8. No previous application has been made for this relief.

JACK PRINCIPALE.

(Sworn to before me July 28, 1950.)

**Memorandum.**

**I decline to sign order to show cause without prejudice to the petitioner's right to make application for similar relief to Judge Leibell, before whom the reorganization proceedings which the within order seeks to reopen were conducted.**

Signed

Judge SIDNEY SUGARMAN.

**Filed July 28, 1950.**

## Order Extending Time to File Record and Brief.

UNITED STATES COURT OF APPEALS,

SECOND CIRCUIT.

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 22nd day of June, one thousand nine hundred and fifty-one.

Present:

Hon. JEROME N. FRANK,
Circuit Judge.

IN THE MATTER
*of*
ASSOCIATED GAS AND ELECTRIC COMPANY,
Debtor,

JACK PRINCIPALE,
Appellant.

A motion having been made herein by appellant *pro se* to extend the time to file the record and brief,

Upon consideration thereof, it is

Ordered that said motion be and it hereby is granted and the time to file the record and brief be and it hereby is extended for 60 days from today.

ALEXANDER M. BELL,
Clerk.

By A. DANIEL FUSARO,
Deputy Clerk.

**Extension of Time Granted.**

UNITED STATES COURT OF APPEALS,

SECOND CIRCUIT.

September 4, 1951.

*In re* ASSOCIATED GAS, ETC.

*vs.*

JACK PRINCIPALE,
Appellant.

Dear Sirs:

The Court has today handed down a decision in the above-entitled cause on your application—granting the application. Please file your original record immediately.

Very truly yours,

ALEXANDER M. BELL,
Clerk.

## Clerk's Certificate.

UNITED STATES COURT OF APPEALS,

SECOND CIRCUIT.

November 23, 1951.

IN THE MATTER

*of*

ASSOCIATED GAS & ELECTRIC CO.
(JACK PRINCIPALE)

In accordance with the provisions of Rule 24 of this Court, the above-entitled case has been added to the calendar, its number being 134.

Very truly yours,

ALEXANDER M. BELL,
Clerk.